



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 26, 2022

IN THE MATTER OF:

Appeal Board No. 624600

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 624599 and 624601, an appeal by the Commissioner of Labor was processed to the Appeal Board from the decisions of the Administrative Law Judge filed July 1, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 16, 2020 through March 7, 2021, as modified to be effective March 16, 2020 through March 2, 2021, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation, as modified to be ineligible to receive benefits on three days per week only for the period of March 16, 2020 through January 17, 2021; and reducing the claimant's right to receive future benefits by 296 effective days and charging a civil penalty of \$4,695 on the basis that the claimant made willful misrepresentations to obtain benefits, as modified as to the amount of the civil penalty in accordance with the Administrative Law Judge decision and referred the civil penalty to the Department of Labor for recalculation.

In Appeal Board No. 624600, the Commissioner of Labor appeals from the decision of the Administrative Law Judge filed July 1, 2022, which sustained the initial determination charging the claimant with an overpayment of \$9,568 in regular unemployment insurance benefits recoverable pursuant to Labor Law §

597 (4), \$4,048 in extended benefits recoverable pursuant to Labor Law § 597

(4), \$12,900 in Federal Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to § 2104 (f) (2) of the

Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; \$4,784 in

Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief, and Economic

Security (CARES) Act of 2020, and \$1,800 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), as modified to be overpaid by three-quarters of the \$368 in weekly benefits the claimant received from March 16, 2020 through the week ending January 17, 2021, as modified to be an FPUC recoverable overpayment beginning with the week ending January 24, 2021, and as modified to be a PEUC non-recoverable overpayment beginning with the week ending September 20, 2020 through the week ending January 17, 2021. Specifically, the Commissioner of Labor appealed insofar as the decision modified the PEUC benefits to be non-recoverable.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

In Appeal Board No. 624600, the Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

In Appeal Board Nos. 624599 and 624601, it now appears that the appeal was processed through inadvertence since the Commissioner of Labor did not appeal these issues in A.L.J. Case Nos. 322-01927 and 322-01929.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant received \$4,784 in PEUC benefits. Specifically, she received 13 weeks of \$368 in PEUC benefits for the weeks ending September 20, 2020 through the week ending December 13, 2020.

OPINION: The Administrative Law Judge in 322-01927 (filed July 1, 2022) decided that the claimant was ineligible to receive benefits on the basis that the claimant was not totally unemployed on three days per week for the period of March 16, 2020 through January 17, 2021, and lacked total unemployment from January 18, 2021 through her last day of work on March 2, 2021. There was no appeal from that decision. We are bound by that decision holding the claimant to be not totally unemployed during this period,

The Administrative Law Judge in 322-01929 (filed July 1, 2022) decided that the claimant's certification statements to zero days of work each

week were willful misrepresentations to obtain benefits so that her right to receive future benefits is reduced by 296 effective days and by a civil penalty. However, the civil penalty was referred back to the Department of Labor for recalculation. There was no appeal from that decision. We are bound by that decision holding that the claimant made willful misrepresentations and was subject a civil penalty.

The only issue before the Board is the recoverability of the PEUC benefits.

The CARES Act § 2107(a)(4)(A)(i) provides that the PEUC weekly benefit amount is the amount equal to what a claimant would receive in regular unemployment insurance benefits for a week of total unemployment under state law. The CARES Act § 2107(e)(2) provides that the State shall require a claimant who received

PEUC benefits to which the claimant is not entitled to repay the PEUC benefits to the State agency. The CARES Act § (a)(4)(B) states, "The terms and

conditions of the State Law which apply to claims for regular compensation and to the payment thereof.... shall apply to claims for [PEUC] and the payment thereof."

The credible evidence establishes that the claimant received \$4,784 in PEUC benefits. As the claimant was ineligible to receive benefits on three days each week because she was not totally unemployed, she was overpaid three-quarters of these benefits. The claimant was entitled to receive one-quarter of the PEUC benefits because she was totally unemployed on one day each week. Accordingly, we conclude, consistent with federal law, that three-quarters of \$4,784 of the PEUC benefits are recoverable. The amount of the overpayment is referred back to the Department of Labor for recalculation.

DECISION: In Appeal Board Nos. 624599 and 624601, the appeals are dismissed.

The decisions of the Administrative Law Judge in A.L.J. Case Nos. 322-01927 and 322-01929 are continued in effect.

In Appeal Board No. 624600, the decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

In Appeal Board No. 624600, the initial determination, charging the claimant

with an overpayment of \$9,568 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$4,048 in extended benefits

recoverable pursuant to Labor Law § 597 (4), \$12,900 in Federal Pandemic

Unemployment Compensation (FPUC) benefits recoverable pursuant to § 2104 (f)

(2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and \$1,800 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), is modified to reflect that the claimant was overpaid by three-quarters of the \$368 in weekly benefits the claimant received from March 16, 2020 through the week ending January 17, 2021, and is modified to be an FPUC recoverable overpayment beginning with the week ending January 24, 2021, and as so modified, is sustained.

That portion of the initial determination, charging the claimant with an overpayment of \$4,784 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to § 2107 (e) (2) of the Coronavirus Aid,

Relief, and Economic Security (CARES) Act of 2020, is modified to reflect that the claimant was overpaid by three-quarters of the \$368 in weekly benefits for the weeks ending September 20, 2020 through the week ending January 17, 2020, and as so modified, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

The amounts of the overpayments, except the LWA overpayment, are referred back to the Department of Labor for recalculation in accordance with this decision.

MICHAEL T. GREASON, MEMBER